

Protest of	)	Date: April 22, 1992
	)	
AUTOMAT SERVICE	)	
	)	
Solicitation No. 089990-91-A-0041	)	P.S. Protest No. 92-17

### DECISION

Automat Service (Automat) protests the award of a contract for food vending services at the Westchester, NY General Mail Facility (GMF) to Canteen Corp.

Solicitation No. 089990-91-A-0041 was issued on February 25, 1991, by the Northeast Procurement and Materiel Management Center in Windsor, CT, with an offer due date of March 22. Section nine of the solicitation provided that "[a]ward will be made to the responsible offeror whose proposal (price and other factors considered) is most advantageous to the Postal Service." The solicitation's evaluation criteria used to determine to whom award should be made were as follows:

A.	Reputation, Experience and Resources .....	200
B.	Sanitation Practices .....	150
C.	Personnel Staffing and Management.....	175
D.	Menu Prices, Portion Sizes and Management Controls .....	175
E.	Menu Variety .....	175
F.	Budget, Accounting System and Controls .....	125
		1,000 <sup>1/</sup>

Four proposals were received. The proposals were reviewed by the evaluation committee. The procurement office performed a separate price evaluation after calling offerors to obtain pricing on certain vended items. The scores and prices were as follows:

<sup>1/</sup> Attachment I to the solicitation contained a breakdown of the evaluation criteria into subfactors and assigned point values to those subfactors.

<u>Offeror</u>	<u>Total Evaluated Score</u>	<u>Average Price</u>
Automat	967	.....\$8.63
Mycor Services, Inc.	931	..... 8.61
Canteen	950	..... 8.14
J&S Vending Service	898	..... 9.47

Canteen's proposal was determined to be the most advantageous to the Postal Service, based on a combination of its second highest evaluated score and its lowest prices, and it was awarded the contract on August 11, 1991. Mycor protested the award on August 23, arguing that the evaluation of offers and request for additional pricing were not in accordance with the requirements set forth in the solicitation. After receiving the contracting officer's statement and report and rebuttal comments from Mycor, we sustained Mycor's protest. Mycor Services Incorporated, P.S. Protest No. 91-57, November 15, 1991. We found two major flaws in the evaluation process:<sup>1/</sup> First, the use of a separate price analysis and award based on a combination of the offeror's evaluated score (which included price as one of the criteria) and an average price calculated for several specified items was in error and violated both the terms of the solicitation and the provisions of the Handbook. Second, we held that "it is obvious that the evaluations [of the offers] were arbitrary and inconsistent," which resulted in the skewing of the scores of all offerors. As relief for these errors, we ordered that all offers be evaluated in accordance with the evaluation criteria set forth in the solicitation, with the contract awarded to Canteen to continue until the reevaluation was complete and an award made in accordance with the terms of the solicitation.

After receiving clarification concerning the extent of the decision in Mycor, the contracting officer proceeded to conduct the reevaluation. The members of the original evaluation committee requested to be replaced on the committee in order to eliminate any appearance of bias or prejudice. Accordingly, a new evaluation committee was formed and it evaluated the offers, with scores as follows:

Canteen	862
Automat	821
Mycor	735
J&S	315

The contracting officer reviewed the evaluations, found them to be acceptable, and determined that award should be made to Canteen.<sup>1/</sup> Automat's protest followed.

Automat argues that award should be made based on the original evaluation scores. It states its understanding of our decision in Mycor that the award to Canteen was flawed

<sup>2/</sup> We also noted that the contracting officer's oral request for clarifications of the offerors' proposals and failure to submit the information received to the evaluation committee for revision of the offerors' scores were in violation of the applicable regulatory provisions contained in Handbook AS-702, "Contracting for Food Service."

<sup>3/</sup> While the file is silent, we assume that this referred to the previously existing contract with Canteen, which had been allowed to remain in force pending the reevaluation of proposals.

only because of the erroneous combination of the offerors' score and the separate price analysis, and that the original evaluation was in no manner "tainted." Automat questions how the evaluations could have changed so much, and concludes that, if it was scored the highest the first time, it should have scored highest the second time. It also implies that Canteen received some benefit from the fact that it has been the incumbent for the past four months, and questions an evaluator's scoring of its proposal based upon a mistake in the number of years which it has been in business. Automat concludes that it should receive award based on the original evaluation.

The contracting officer notes that Automat's protest is really against the Mycor decision itself, rather than against the reevaluation of offers conducted by his office. He notes that he conducted the reevaluation in accordance with that decision and the terms of the solicitation, and, on that basis, Canteen was found to have the highest score. Therefore, award was properly made to Canteen.<sup>4/</sup>

Most of Automat's protest concerns the holding in the Mycor decision. However, Automat cannot challenge that decision, because it was not an interested party who participated in the decision, and, therefore, cannot request reconsideration of that decision. Procurement Manual (PM) 4.5.7 n.; see POVECO, Inc., On Reconsideration, P.S. Protest No. 85-09, June 12, 1985. In any event, Automat's position is without merit. Mycor clearly states that the evaluation of offer was flawed and required the contracting officer to reevaluate all offers. Automat's position to the contrary is without any factual basis and cannot provide an adequate ground for protest.

Automat raises two minor points as to the actual reevaluation of offers. First, it claims that it was downgraded because an evaluator believed that it had only been in business ten years. Our review of the evaluations indicates that this allegation is without merit; as the evaluator stated that the "present owner" of Automat has been in the food business for ten years not that Automat had been in business for that period.

Second, Automat alleges that Canteen has somehow benefitted in the reevaluation due to its four months of contract performance. This is wrong as a matter of fact and law. Since the reevaluation of Canteen's proposal dealt only with the proposal it initially submitted, Canteen's subsequent performance cannot have affected the evaluation. Second, we have previously held that a competitive advantage accruing to an offeror because of its own position need not be equalized as long as the advantage does not result from preferential treatment by the government. Pitney Bowes, Inc., P.S. Protest No. 89-22, July 7, 1989. There is no probative evidence in the protest file which indicates that Canteen has been treated preferentially by the Postal Service.<sup>5/</sup>

<sup>4/</sup> Automat submitted comments on the contracting officer's statement which reiterate the points made in its protest.

<sup>5/</sup> Our review of the evaluator's numerical scores and narrative comments indicates that there is some degree of inconsistency between the two. However, we do not substitute our judgement for that of the evaluators or disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulations. Rickenbacker Port Authority and The Turner Corporation, P.S. Protest No. 91-78, February 10, 1992. We do not consider the minor inconsistencies in the evaluation to rise to the level which would necessitate remedial action.

The protest is denied.

William J. Jones  
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